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No. 428

In the Supreme Court of the United States

OCTOBER TERM, 1929

JAMES E. TYLER, JR., AND WILLIAM G. TYLER, ADMINISTRATORS OF THE ESTATE OF JAMES E. TYLER, DECEASED, PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 428

JAMES E. TYLER, JR., AND WILLIAM G. TYLER, Administrators of the Estate of James E. Tyler, Deceased, petitioners

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The United States does not oppose the petition.

The question involved is whether Section 202 of the Revenue Act of 1916, c. 463, 39 Stat. 756, 777–778, is unconstitutional in so far as it requires the value of property held by husband and wife as tenants by the entirety to be included in the gross estate of the deceased spouse for Federal estate tax purposes.

On the same day that the petition for certiorari in the instant case was filed, the Circuit Court of Appeals for the Third Circuit held, in *United States of America* v. *Provident Trust Company of Pennsylvania and Charles Sinkler, Administrators c. t. a. of*

Estate of James K. Young, Deceased, decided October 4, 1929, not yet reported, that Section 402 of the Revenue Act of 1921, c. 136, 42 Stat. 227, 278, which is identical in all material respects with Section 202 of the Revenue Act of 1916, here involved, is unconstitutional in so far as it provides for the inclusion in the gross estate of property held by decedent and his wife as tenants by the entirety. While the *Young case* concerned property in Pennsylvania and the instant case relates to property in Maryland, the constitutional question is precisely the same in both cases; and the Government is about to file a petition for certiorari in the *Young case.*

While we believe that the decision of the Circuit Court of Appeals in the instant case is correct, we do not oppose the petition for certiorari, because of the conflict of decisions now existing and the importance of the question involved.

Respectfully submitted.

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NOVEMBER, 1929.

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